


Memorandum

To : Mr. Ramon J. Hirsig
Executive Director – MIC: 73

Date: September 23, 2004

From : 
Stephen R. Rudd, Acting Deputy Director
Sales and Use Tax Department – MIC: 43

Subject : Regulation 1589, *Containers and Labels*
Chief Counsel's Rulemaking Calendar – October 19, 2004

I am requesting your approval to place proposed amendments to Regulation 1589, *Containers and Labels*, on the Chief Counsel's Rulemaking Calendar for Board approval.

Regulation 1589 provides various exemptions from the tax, including an exemption for returnable and nonreturnable containers under specified conditions. The proposed amendments would add a new subdivision (b)(1)(E) to incorporate the provisions of Revenue and Taxation Code (RTC) 6364(d), operative April 1, 2000. RTC Section 6364(d) provides an exemption for the sale or lease of a container to a person who places food products for human consumption in the container for shipment, provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged prior to sale.

Attached are proposed amendments to the regulation, which reflect the above change.

We request your approval to place the matter on the Chief Counsel's Rulemaking Calendar on October 19, 2004, for Board authorization to amend the regulation in accordance with Title 1, California Code of Regulations, section 100. Legal Department staff has advised us that these changes are without regulatory effect and are not subject to the normal public hearing process.

If you have any questions regarding this request, please let me know or contact Ms. Mariflor Jimenez at (916) 324-2952.

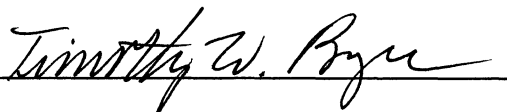
Attachment

Recommendation by:



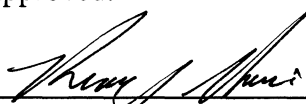
Deputy Director

Approved:



Timothy Boyer, Chief Counsel
Legal Department

Approved:



Ramon J. Hirsig, Executive Director

BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

Attachments

cc (all with attachments):
Mr. Timothy Boyer (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Janice Thurston (MIC 82)
Mr. John Waid (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Acting Supervisor, BTC Team (MIC 50)
Ms. Cecilia Watkins (MIC 50)
Ms. Mariflor Jimenez (MIC 50)

bc: BTCTS file – Regulation 1589
 SUTD Deputy Director's File

Author: Cecilia Watkins

Proposed Amendments to Regulation 1589. CONTAINERS AND LABELS.

(a) **DEFINITIONS.** The term "containers" as used herein means the articles in or on which tangible personal property is placed for shipment and delivery such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, cartons, sacks, pallets, and materials from which such containers are manufactured.

The term "returnable containers" as used herein means containers of a kind customarily returned or resold by the buyers of the contents for re-use by the packers, bottlers or sellers of the commodities contained therein. A container, title to which is retained by the seller or for which a deposit is taken by such seller, is a returnable container.

A container used for shipment or delivery of food for human consumption is not customarily returned by the buyer when:

1. The container is sold together with the contents;
2. No deposit is charged on the container;
3. Title to the container is not retained;
4. There is no obligation to repurchase the container;
5. The container is of the type that is fungible; and
6. The container is repurchased without regard to whether it is the same container originally sold.

Example: A tomato paste processor purchased a new or used container. The processor fills the container with tomato paste or other processed food. The tomato paste, together with the container, is sold to a spaghetti sauce manufacturer. No deposit is charged on the container, title to the container is not retained, and there is no obligation to repurchase the container. The container is of a type that is fungible. The spaghetti sauce manufacturer sells the container to a warehouse or a food processor who in turn sells containers that may or may not include the original container to a tomato paste processor that may or may not be the original purchaser. This container is not customarily returned by the buyer.

Examples of returnable containers are: registered dairy products containers, steel drums, certain types of beer and soft drink bottles, wine barrels, chemical carboys, and gas cylinders.

All other containers are "nonreturnable containers." Examples of nonreturnable containers are: wrapping and packing materials, paper bags, twine, cartons, cans, medicine and distilled spirits bottles.

The term "deposit" as used herein means an amount charged to the purchaser of the contents of the container with the understanding that such amount will be repaid when the container or a similar container is delivered to the seller. The term "deposit" as used herein does not include amounts representing redemption or recycling values of beverage containers pursuant to division 12.1 (commencing with Section 14500) of the Public Resources Code whether or not such amounts are separately stated to the purchaser of the contents of the container.

(b) APPLICATION OF TAX.

(1) Containers. Tax does not apply to the sales of, and the storage, use, or other consumption of:

(A) Nonreturnable containers when sold or leased without the contents to persons who place the contents in the container and sell the contents together with the container.

(B) Nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sale.

(C) Returnable containers when sold with the contents in connection with a retail sale of the contents, or when resold for refilling. In the case of a lease of a returnable container that is a continuing sale, the lessor's first lease of the container for filling is taxable for the full term of the lease or thirty (30) days whichever is greater. The lessor's subsequent lease of the container for refilling for sale with the contents is not taxable.

(D) All containers when sold or leased with the contents, if the sales price of the contents is not required to be included in the measure of the sales tax or the use tax.

(E) Operative April 1, 2000, all containers when sold or leased without the contents to persons who place food products for human consumption in the containers for shipment, provided the food products will be sold. The exemption applies without regard to whether the food products are sold in the same container or not, or whether the food products are remanufactured or repackaged prior to their sale.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Proposed Amendments to Regulation 1589 (continuation)

Tax applies to all other sales of containers except sales for the purpose of resale to other sellers of containers who purchase them for resale without the contents.

Operative April 1, 1998, tax does not apply to the sale or to the storage, use, or other consumption of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives held for medical purposes, including, but not limited to, blood collection units and blood pack units.

Deposits as defined herein are not taxable.

(2) **LABELS.** Tax does not apply to sales of labels or nameplates if:

(A) The purchaser affixes them to property to be sold and sells them along with and as a part of such property, as, for example, sales of nameplates of manufacturers or producers which are permanently affixed to each unit of products sold, such as automobiles and machinery.

(B) The purchaser affixes them to nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers.

(c) PARTICULAR APPLICATIONS.

(1) **Price Tags.** Tax applies to sales of such items as price tags, shipping tags and advertising matter used in connection with the sale of property or enclosed with the property sold.

(2) **Feed Analysis Tags.** Tax does not apply to sales of feed analysis tags to be attached to containers of feeds and sold along with the container and contents.

(3) **Feed Bags.** Feed bags sold to feed dealers who place feed in the bags and sell the feed together with the bags are nonreturnable containers,¹ and the sale of such bags to feed dealers is not taxable. It is immaterial whether the bags are made of burlap, cotton, paper, or other material, or whether there is a brand name or dealer's name imprinted on the bags.

If, however, any feed dealer charges a deposit to customers to secure the return of the bags, or otherwise requires his customers to return the bags to him, the bags become returnable containers and tax applies to the sale of the bags to the feed dealer.

(4) **Gift Wrapping.** Tax applies to the entire charge for "gift wrapping", (i.e., furnishing the materials and labor required to wrap an item for a customer so as to be suitable for use by him as a gift), whether or not the person who does the gift wrapping is the seller of the contents. If the person who does the gift wrapping is the seller of the contents, the gift wrapping is considered sold together with the contents, whether or not a separate charge is made for the gift wrapping. The person who does the gift wrapping may purchase the materials free of tax for resale.

However, tax does not apply to charges for gift wrapping exempt food products sold by the person who does the gift wrapping, unless the value of the gift wrapping exceeds the value of the food products.

¹ The conclusion that feed bags are nonreturnable containers resulted from a statewide survey made by the board with the cooperation of the California Grain and Feed Association, which showed that substantially less than 50 percent of the feed bags are returned to the feed dealers by their customers for re-use.